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Federal Communications Commission
Consumer & Governmental Affairs Bureau
Washington, D C 20554

02-278
CGB

SEP 8 2003

Control No 0302410-Pol

The Honorable Virgil H. Goode, Jr.
United States House of Representatives
70 East Court Street, Suite 215
Rocky Mount, VA 24151

RECEIVED

SEP 11 2003

Dear Congressman Goode:

Thank you for your letter of August 8, 2003, on behalf of your constituent, Mr. Donald L. Hall, regarding the Federal Communications Commission's (Commission) recent amendments to the rules implementing the Telephone Consumer Protection Act of 1991 (TCPA). Mr. Hall, the President of Virginia Automobile Dealers Association, specifically ask about the Commission's rules on unsolicited facsimile advertisements

On September 18, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) in CG Docket No. 02-278, seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. The NPRM sought comment on the option to establish a national do-not-call list, and how such action might be taken in conjunction with the national do-not-call registry rules adopted by the Federal Trade Commission (FTC) and the numerous state do-not-call lists. In addition, the Commission sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules.

The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's Report and Order released on July 3, 2003, the record indicated that many consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving hundreds of unsolicited faxes was not just limited to the cost of paper and toner, but includes the time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night.

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As we explained in the Report and Order, the legislative history of the TCPA indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Therefore, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. The amended rules require all entities that wish to transmit advertisements to a facsimile machine to obtain permission from the recipient in writing.

The Commission's amended facsimile advertising rules were initially scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the July Report and Order, the Commission, on its own motion, determined to delay the effective date of some of the amended facsimile rules, including the elimination of the established business relationship exemption, until January 1, 2005. The comments filed after the release of the Report and Order indicate that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. Enclosed is a copy of the Commission's Order on Reconsideration, released on August 18, 2003.

We appreciate your comments. We have placed a copy of your correspondence in the public record for this proceeding. Please do not hesitate to contact us if you have further questions

Sincerely,

Handwritten signature of K. Dane Snowden in black ink.

K. Dane Snowden

Chief

Consumer & Governmental Affairs Bureau

Enclosures

DE, JR
CINIA

**Congress of the United States
House of Representatives
Washington, DC 20515-4605**

**PLEASE USE THE
ROCKY MOUNT ADDRESS**

August 8, 2003

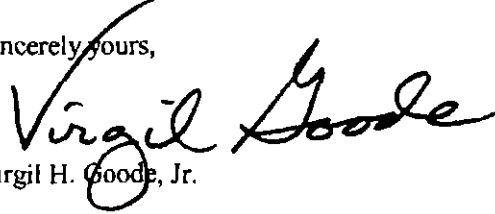
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Mr. Michael K. Powell, Chairman
Federal Communication Commission
445 12th Street, SW
Room 8-B201
Washington, DC 20554

Dear Mr. Powell:

I wanted to share with you a letter that I received from the President of Virginia Automobile Dealers Association. It seems to me that the executive office of the Virginia Automobile Dealers Association should be able to fax information or advertisements to any of their members. The executive office of the VADA has established a business relationship with each of its members. I hope you will take a close look at this matter and allow associations like VADA to continue to fax and communicate with their members. Thank you for your consideration.

Sincerely yours,


Virgil H. Goode, Jr.

VHGjr/cld

Cc. Mr. Donald L. Hall, President
Virginia Automobile Dealers Association
P.O. Box 5407
Richmond, VA 23220

70 East Court Street, Suite 215, Rocky Mount, VA 24151
Fax: 540-484-1459 Phone: 540-484-1254

PRINTED ON RECYCLED PAPER



August 4, 2003

The Honorable Virgil H. Goode, Jr.
70 East Court Street, Suite 215
Rocky Mount, VA 24151

Dear Virgil:

Please pardon me for sending such a lengthy letter, but I am shocked by the new fax regulations recently announced by the FCC that are simply unparalleled as an example of a regulatory process run amok resulting in too much government intrusion into the legitimate activities of business. I am unable to understand a regulation that basically prevents businesses including the VADA and the Virginia auto dealers we represent from communicating with their own members and customers.

I have outlined our understanding of the new rule as well as our grave concerns as to its impact on Virginia businesses including the VADA and its auto dealer members.

On July 25, 2003, the Federal Communications Commission (FCC) revised the current rules to the Telephone Consumer Protection Act (TCPA). 68 Fed. Reg. 44,144 (Jul 25, 2003) (to be codified at 47 C.F.R. § 64.1200). The final rule is effective August 25, 2003.

The final rule now requires that any person or entity who wishes to send a fax advertisement must obtain prior, written permission from the recipient. This applies to all businesses, including associations like the VADA and the automobile dealers in Virginia we represent. This requirement applies to any fax sent containing "any material advertising the commercial availability or quality of any property, goods, or services." 47 C.F.R. § 64.1200(f)(10).

Permission must be in writing. Along with the recipient's signature, a form granting permission to receive fax advertisements must also include the recipient's fax number and a clear statement that the recipient consents to receive fax advertisements from the sender. Also, opt-out provisions are not allowed. This means that fax advertisements may not be sent with an instruction that the recipient call a phone number if he or she does not want to receive future faxes.

The final rule significantly impacts all businesses, including associations like the VADA and the automobile dealers in Virginia we represent. Under the former rule, a business could send fax advertisements without obtaining prior written consent from a recipient so long as that business had an "established business relationship" with the recipient. An "established business relationship" meant a relationship formed by a voluntary two-way communication based upon an inquiry, application, purchase or transaction. For associations, that meant that all members had an established business relationship, and the association could communicate by fax without specific consent.

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The final rule directly impacts the way businesses, including automobile dealerships, conduct their businesses. For example, a dealership will now be forced to obtain written permission from every prospective buyer prior to faxing a quote for purchasing a car, whether the quote was requested on-line, by phone, or at the dealership. Additionally, service departments will be required to obtain permission prior to faxing estimates for repairs even if the customer drops his or her car off for that purpose.

The final rule directly impacts associations, including the VADA, seeking to send fax advertisements to anyone, including their members, regarding meetings, services and products offered by the associations. Without express, written permission, an association like the VADA cannot fax dues statements, meeting notices, notices of the availability of services, etc. An FCC attorney, in an association training session on the new rule, even took the position that an association faxing a request for a PAC contribution without express written consent would be a violation.

This rule would be bad enough if it were simply enforced by the FCC. The rule establishes the standard that, if violated, can lead to private civil actions. Businesses across the country have been subjected to lawsuits seeking millions of dollars for violations of the TCPA. This rule will magnify the compliance problems.

It is our hope that you and your colleagues in Congress can return a measure of sanity to these regulations by recognizing that communicating by fax with existing customers of Virginia dealers and others businesses and members of Virginia associations like the VADA should not require additional consent other than the agreement of the customer or member to patronize the business or maintain membership in the association. I ask that Congress take the necessary steps to ensure this new regulation does not prevent businesses including automobile dealers and associations from communicating with their customers.

I would appreciate your response as soon as possible.

Thank you for your consideration of this critical problem for the automobile dealers of Virginia and the Virginia Automobile Dealers Association.

Sincerely,



Donald L. Hall
President

cc: Carter Myers, *Colonial Auto Center*
Robert Woodall, *Woodall Chevrolet*